

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, 2008

**MEMORANDUM OF INCORPORATION**

**Name of Company: Hermanusdoorns Shareblock Limited**

**Registration Number: 1991/006901/06**

("the Company")

**Incorporation**

(1) The Company is incorporated as a Share Block Company, as defined in the Share Blocks Control Act No.59 of 1980 as amended.

(2) The Company is incorporated in accordance with, and governed by-

- (a) The unalterable provisions of the Companies Act, 2008 that are applicable to Profit companies;
- (b) The alterable provisions of the Companies Act, 2008 that are applicable to Profit companies, subject to any limitation, extension, variation or substitution set out in this Memorandum; and
- (c) The provisions of this Memorandum of Incorporation.

**NOTE 1**

This Memorandum of Incorporation contains statutory provisions of the Share Blocks Act in Annexure 1 that shall apply to the Company.

**NOTE 2**

The Memorandum of Incorporation contained in Form CoR 15.1 B of the Companies Regulations, 2011 shall not apply to the Company.

This MOI was adopted in accordance with a proposal by the Board issued on 15<sup>th</sup> July 2013 and adopted by a special resolution taken by the voting Members at a general meeting of the Company held on 10<sup>th</sup> August 2013.

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ANNEXURE 1 – Provisions of the Share Block Control Act

ANNEXURE 2 – Use Agreement

ANNEXURE 3 – Form of Proxy

## 1. INTERPRETATION

In the interpretation of this MOI and unless contrary to or excluded by the subject or context:

1.1 any word herein signifying:

1.1.1 the singular shall include the plural and vice versa;

1.1.2 the masculine shall include the feminine and the neuter;

1.2 any word herein which is defined in the Act and is not defined in article 1.6 shall bear that statutory meaning in this MOI;

1.3 any word, phrase or sentence herein which is not defined in the Act or in article 1.6 shall bear its usual meaning;

1.4 each term, power or authority herein shall be given the widest possible interpretation;

1.5 phrases as defined in the Share Blocks Act shall have the meanings so assigned and words importing persons shall include those legal entities defined in article 1.6.14;

1.6 each of the following words and expression herein shall have the meaning stated opposite it and, where applicable, shall include the word or expression stated opposite it:

1.6.1 "Act" shall mean the Companies Act, 71 of 2008, as amended from time to time;

1.6.2 "Board" shall mean the Board of Directors for the time being of the Company elected in terms of article 18;

1.6.3 "Company" shall mean this Company;

1.6.4 "Chairman" shall mean the Chairman of the Board for the time being of the Company elected in terms of article 18.10;

1.6.5 "Conversion Fee" means a fee payable by the Member to the Company on the formation of a Family Trust or Syndicate after 11 August 2012 in terms of 8.12 or 8.13. The fee shall be determined on the purchase price or deemed market value and the number of beneficiaries as per 8.12.5 or participants as per 8.13.6.

- 1.6.6 “Director” shall mean a director for the time being of the Company elected in terms of article 18;
- 1.6.7 “Electronic Communication” shall bear the same meaning as set out in section 1 of the Electronic Communication and Transaction Act, 25 of 2002;
- 1.6.8 “General Meeting” shall mean any general meeting of the of the Company or any adjournment hereof, including an annual general meeting convened in terms of article 10.1 as the case may be;
- 1.6.9 “Income Tax Act” Shall mean the Income Tax Act, 58 of 1962, as amended from time to time;
- 1.6.10 “Member” shall mean any of the Members of the Company referred in article 6.10;
- 1.6.11 “MOI” shall mean the Memorandum of Incorporation of the Company as contained in this document, as duly amended from time to time;
- 1.6.12 “Month” means a calendar month;
- 1.6.13 “Office” shall mean the registered office for the time being of the Company;
- 1.6.14 “Person” shall include any natural person, Company or body corporate, a statutory body, a partnership or an association of persons, as the case may be, having the legal capacity required in terms of the laws of the Republic;
- 1.6.15 “Property and Buildings” means the buildings erected on the immovable property described below and known as “Hermanusdoorns” or “the farm”:
- The remaining portion 650 of the farm Hermanusdoorns in the registration division KQ Northern Province;
  - The remaining portion 4 of the farm Mana Mane 201 in the registration division KQ Northern Province;

- The farm La Rive 592 in the registration division KQ Northern Province;
- 1.6.16 “Republic” shall mean the Republic of South Africa;
- 1.6.17 “Resident” any shareholder who lives permanently on the farm or;
- (i) For 90 consecutive days in a 12 month period or;
  - (ii) For more than 180 days in total in a 12 month period or;
  - (iii) As otherwise determined by the board of directors;
- 1.6.18 “Scheme Assets” shall mean the Property and Buildings as defined and all property related and other assets that may be acquired from time to time for the Company to conduct its business in accordance with its purpose and main objects;
- 1.6.19 “Share” shall mean that set out in Section 1 of the Share Blocks act and relates to the share block granting a right of use to the holder thereof;
- 1.6.20 “Share Blocks Act” shall mean the Share Blocks Control Act No.59 of 1980, as amended, and the regulations promulgated from time to time in regard thereto;
- 1.6.21 “Sign” shall include the reproduction of signature lithography, printing with an india-rubber stamp or any other electronic communication process, partly the one and partly the other process and “signature” has the corresponding meaning;
- 1.6.22 “the Statutes” means the Companies Act and the Share Block Act as may be applicable, and every other Act for the time being in force concerning Companies and affecting the Company;
- 1.6.23 “Unit” means that portion of the property which in terms of the Use Agreement is for the exclusive use of the Member, including the building which is constructed or will be constructed for and on account of the Member;

- 1.6.24 “Use Agreement” shall mean the Use Agreement in terms of the provisions of the definition in Section 1 of the Share Blocks Act, and as further set out in Annexure 2 attached hereto;
- 1.6.25 “Writing” shall include printing, typewriting, lithography or any other electronic communication process, or partly one and partly the other;
- 1.6.26 “Year” means a calendar year;

## **2. PURPOSE AND OBJECTS OF THE COMPANY**

- 2.1 The main purpose and object the Company is to operate a share block scheme in respect of the Property and Buildings in accordance with the Share Blocks Act entitling a Member to use specified parts of the Property and Buildings in accordance with the Use Agreement entered into between the Member and the Company; and for the company to acquire Scheme Assets from time to time in the course of the management of the company in order for Members to realize their rights of use as contemplated in Article 6 of this Memorandum of Incorporation.

## **3. POWERS AND CAPACITY OF THE COMPANY**

- 3.1 The Company has the powers and capacity of a person.
- 3.2 Notwithstanding the omission from this MOI of any provision to that effect, the Company may do anything which the Act and the Share Blocks Act empowers a Company to do.
- 3.3 The Company is restricted in its powers and capacity in terms of the provisions of the Share Blocks Act and other provisions for the control of the business of the Company, and these are recorded in Annexure 1 hereto.

#### **4. CONDITIONS**

- 4.1 The Company shall ensure that the whole of its activities are directed to the furtherance of its main and stated objects.
- 4.2 The Company shall utilise its assets and income to advance its stated objects for which it has been established.

#### **5. MEMORANDUM OF INCORPORATION AND COMPANY RULES**

- 5.1 Save for correcting patent errors in spelling, punctuation, reference, grammar or similar defects, which the Board is empowered to do in terms of Section 17(1) of the Act, all other amendments of the MOI shall be effected in accordance with Section 16(1) of the Act.
- 5.2 This MOI does not restrict, limit or qualify the power of the Board to make, amend or repeal any necessary or incidental rules relating to the governance of the Company in respect of matters that are not addressed in the Act or this MOI, in accordance with the provisions of sections 15(3) to 15(5) of the Act.
- 5.3 If the Board makes any rules, it must file and publish a copy of those rules in the manner prescribed in the Act.
- 5.4 If the Board alters the MOI or any rules made by it, in terms of Section 17(1) of this Act, it must publish a notice of such alteration in the manner prescribed by the Act.

#### **6. SHARE CAPITAL**

- 6.1 The authorized share capital of the Company is R104, 000 (One Hundred and Four Thousand Rand) divided into 104 (One Hundred and Four) ordinary par value shares of R1,000 (One Thousand Rand) each.
- 6.2 The shares comprising each share block shall confer on the holder for the time being of each share block the right to use of the unit and such other part of the company's Property and Buildings, not reserved for the exclusive use



of the other share block holders for recreational purposes only on the terms and conditions contained in a Use Agreement entered into or to be entered into between the company and such holder and the management regulations applicable in terms hereof.

- 6.3 None of the shares in the capital of the Company which are not apportioned among the share blocks referred to in sub-article 6.1 above may be issued otherwise than on the authority of a special resolution of the Members of the Company and subject to the proviso that if they are so issued, such shares shall be apportioned among the share blocks, and the shares comprising each such share block shall confer on the holder the rights referred to in sub-article 6.2 above, subject to the terms and conditions set out in and referred to in that sub-article.
- 6.4 All shares of the Company shall:
- 6.4.1 Confer a right to vote at any meeting of the Company;
  - 6.4.2 Confer the same vote as every other share in the Company;
  - 6.4.3 Confer a right to an interest in the use of the Property and Buildings in accordance with the provisions of the Annexure 2 hereto.
- 6.5 Save as is otherwise hereinafter provided for and subject to the provisions of the Share Blocks Act and without prejudice to any special rights previously conferred on the holder of existing shares in the Company, any share may be issued with such special rights or subject to such restriction as the Company may from time to time determine.
- 6.6 If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class but always subject to the conditions of article 6.3 above) may be varied with the consent in writing of the holder of three fourths of the issued shares of that class or with the sanction of a resolution passed at a separate general meeting of the holders of the shares of the

class, and the provisions of Section 65 of the Act shall mutatis mutandis apply to the said resolution and meeting as if the resolution were a special resolution. To every such separate general meeting the provisions of this MOI relating to general meetings shall mutatis mutandis apply but so that the necessary quorum shall be members holding not less than two thirds of the voting rights that are entitled to be exercised by Members present in person or by proxy of all the issued shares of the class. This article does not curtail the power of the Company to vary the rights attached to any share which has not been issued, subject to the provisions of article 6.3 above being adhered to.

- 6.7 The Company may from time to time by special resolution increase the share capital by such sum divided into shares of such amount, or may increase the number of its shares of no par value to such number, as the resolution shall prescribe.
- 6.8 New shares shall be subject to the same provisions as to transfer, transmission and otherwise as the shares in the original share capital.
- 6.9 The Company may by special resolution:
- 6.9.1 consolidate and divide all or any of its share capital into shares of larger amount than its existing shares or consolidate and reduce the number of the issued shares of no par value;
  - 6.9.2 increase the number of its issued no par value shares of smaller amount than is fixed by this MOI;
  - 6.9.3 sub-divide its existing shares or any of them into shares of smaller amount than is fixed by this MOI;
  - 6.9.4 cancel any shares which at the date of the passing of the resolution, have not been taken by any person, or which no person has agreed to take;

- 6.9.5 reduce its share capital, stated capital, any capital redemption fund or any share premium account in any manner and with, and subject to, any incident authorized and consent required by law;
- 6.9.6 convert any of its shares whether issued or not into shares of another class.
- 6.10 The Company shall maintain at its registered office a share register of the Members of the Company and the registration, transfer, issue and certification of shares shall be in accordance with the provisions of Sections 50 and 51 of the Act.
- 6.11 Every person whose name is entered in the register of Members shall be entitled to one certified copy of a certificate for all the shares attached to the share block/s and use rights registered in his name or to several certified certificates in respect of each of the share blocks. Every original Member shall be entitled to one certified copy of a Share Certificate free of charge but for every subsequent certificate the Directors may make such charge as from time to time they may think fit; provided that if a Share Certificate is defaced, lost or destroyed, it may be renewed on the payment of such fee, and on such terms, if any, as to the evidence and indemnity as the Directors may think fit.
- 6.12 Share Certificates shall be issued under the authority of the Directors and as prescribed by the Act.
- 6.13 Where two or more persons hold one or more shares of the company jointly they shall for the purposes of hereof be treated as a single Member.
- 6.13.1 Consortiums as outlined in 9.3 (where applicable), 8.11.3, 8.12.5 and 8.13.6 shall not be treated as a single Member for levy purposes.
- 6.14 A certificate for shares registered in the names of two or more persons shall be delivered to the person first named in the register as a holder thereof and

delivery of a share certificate to that person shall be sufficient delivery to all joint holders of that share.

- 6.15 It is recorded that there are special rights attached to Unit 30 as a result of the transaction approved by Special Resolution in the 2001 AGM for the acquisition and incorporation of the remaining portion of the farm Mana Mane in the registration division KQ Northern Province into the Share Block.

## **7. LIEN ON SHARES AND MEMBERS INTEREST**

- 7.1 The Company has a first and paramount lien and a pledge on every share for the amounts due to it by the holder of such share whether payment has become due or not. The amounts so due to the Company shall include the costs of any acts performed or proceedings instituted by the Company in its efforts to recover such amounts.
- 7.2 The Company shall not be obliged to recognise the pledge by a Member of any share in the Company to a third party but as soon as an amount becomes due and payable by a Member to the Company, all shares held by such Member shall from that moment become pledged by such Member to the Company.
- 7.3 In the event of such Member holding the original share certificate then in such event the Member shall hold the certificate relating to the pledged share as agent for the Company. A share shall remain so pledged until the amount due has been settled or the share has been realised as provided in article 7.5.
- 7.4 Notwithstanding anything to the contrary contained in this MOI the Company shall, upon the issue or replacement of a share certificate to a Member, retain possession of the Member's original share certificate/s and shall hold the same in pledge as security for all and any amounts which may be or become owing by the Member to the Company.

- 7.5 The Company shall be entitled to realise any share on which it has a lien in terms of article 7.1 and any share becoming pledged to it in terms of article 7.2 and or article 7.3 and/or article 7.4 by realising such share in the following manner:
- 7.5.1 the holder of the share shall be given 30 business days written notice through the post in a prepaid letter addressed to his registered address of the realisation;
- 7.5.2 the notice shall state the amount of the claim, demand payment hereof within the said period of notice and advise the shareholder that if the amount due remains unpaid the share shall be sold to recover so much of the debts as may be realised by the sale;
- 7.5.3 the sale shall be by way of a tender process or in such other duly publicised manner as in the bona fide opinion of directors would realise a more favourable price in the circumstances than is likely to be achieved by public auction.
- 7.6 The net return of any such sale shall be applied in respect of the amount due to the Company and the Member shall remain liable for any shortfall. In the event of an over recovery the credit balance, if any, shall be paid to the Member upon demand.
- 7.7 On any sale as aforementioned the directors may enter the name of the purchaser in the register of Members of the Company and the purchaser shall have no responsibility to attend to the application of the purchase price and his rights to the shares shall not be prejudiced by any irregularity or invalidity in the procedures in relation to the sale.
- 7.8 Except as herein further provided, an affidavit by a director or the secretary of the Company that the share has been duly sold in accordance with the provisions of the preceding sub-article shall be conclusive evidence of the facts therein stated as against all persons laying claim to such shares or the

proceeds thereof, and such affidavit and the receipt by the Company of the purchase price of shares shall be conclusive proof of the rights to such shares.

## **8. TRANSFER AND TRANSMISSION OF SHARES**

8.1 No share in the capital of the Company shall be capable of being held independently from all the other shares contained in the same share block, and no share may be transferred except simultaneously with and to the same transferee as the whole of the other shares included in the same share block, and together with the transfer, cession and assignment of:

8.1.1 the relevant portion of the loan obligation allocated to the share block in question, and

8.1.2 the Use Agreement pertaining to the share block in question and the assumption by the transferee of all the transferor's obligations thereunder.

8.2 Save as otherwise provided in this MOI or in the terms of issue of any class of shares:

8.2.1 no shares may be transferred to any transferee without the prior consent and approval of the directors of the Company, which consent shall not, however, apply to the transfer of any shares by a Member or by his executors or administrators or other legal representatives to the spouse or any descendant or ascendant of such Member.

8.3 The instrument of transfer of any shares in the company shall be in the form which the directors approve and shall be executed by both the transferor and the transferee, but the directors are entitled to waive the requirement of the transferee's signature thereon. The transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register of members as holder thereof.

8.4 Every instrument of transfer, accompanied by a certificate of the shares to be transferred, shall be lodged at the registered office of the company. Before a

transfer may be registered, the transferee shall pay in settlement of the expenses arising from the transfer of shares such fees in respect of each deed of transfer, as may be fixed by the directors, and any other duties and taxes which may be applicable. Every power of attorney given by a shareholder authorising the transfer of shares, shall when lodged with or produced or exhibited to the company, be deemed as between the company and the grantor of the power to continue and remain in full force and effect, and the company may allow that power to be acted upon until such time as express notice in writing of its revocation has been lodged at the company's registered office where the power was lodged, produced or exhibited. The company shall not be bound to allow the exercise of any act or matter by an agent for the shareholder unless a duly certified copy of that agent's authority be produced and lodged with the company.

- 8.5 The executor of the estate of a deceased sole holder of a share shall be the only person recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivor or survivors, or the executor of the last deceased survivor, shall be the only persons recognised by the company as having any title to the share.
- 8.6 Any person becoming entitled to a share in consequence of the death or insolvency or liquidation of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right, either to be registered as a member in respect of the share or instead of being registered himself, to make such transfer to the share as the deceased or insolvent could have made, but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or insolvent before the death of insolvency.
- 8.7 The parent or guardian of a minor and the curator bonis of a lunatic member, or a mentally deficient member, or of a member who has been declared a prodigal and any person becoming entitled to shares in consequence of the

death or insolvency or liquidation of any member, or the marriage of any member or by any lawful means other than by the transfer in accordance with these articles, may, upon producing such evidence as sustains the character in respect of which he proposes to act under this article, or of his title, as the directors think sufficient, transfer these shares to himself or any other person.

- 8.8 A person becoming entitled to a share by reason of the death or insolvency or liquidation of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being the registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.
- 8.9 Any person who submits proof of his appointment as the executor, administrator, trustee, curator or guardian in respect of the estate of a deceased member of the company, or of a member whose estate has been sequestrated or of a member who is otherwise under a disability, shall be entered in the register of members of the company nominee officil, and shall thereafter for all purposes, be deemed to be a member of the company.
- 8.10 In addition to the requirements outlined in articles 8.1 to 8.9 the following additional restrictions and costs will be applicable to transfers in the event of the transfer in the case of inheritance; transfers to family trusts and syndicates after 11 August 2012. A transfer to an individual Member will carry no conversion fee.

**8.11 Inheritance**

8.11.1 The directors will permit in the event of the death of a shareholder, subject to the terms and conditions as outlined in this Memorandum of Incorporation, the share to be registered jointly in the name of the heirs.



8.11.2 The total levy payable by the heirs will be determined in accordance with the following table 8.11.3 and will be levied in equal parts on each of the heirs 21 years of age or older, provided that the minimum of the levy for one heir is payable. The notices and levy invoice will be sent to the first-named in the share register.

8.11.3 Levy structure - inheritance

No heirs (Over 21 years of age)	Conversion fee	Levy of non- resident levy	Levy per beneficiary
1	R0	100%	100%
2	R0	115%	57.5%
3	R0	130%	43.3%
4	R0	145%	36.3%
5	R0	160%	32.0%
6	R0	175%	29.2%
7	R0	190%	27.1%
8	R0	205%	25.6%
9	R0	220%	24.4%
10	R0	235%	23.5%

8.11.4 There will be no conversion fee applicable should the transfer be undertaken in terms of 8.11.

**8.12 Family trusts**

8.12.1 The directors will permit the sale or transfer of shares to a family trust, subject to the terms and conditions as outlined in this Memorandum of Incorporation as well the following additional restrictions and requirements;

8.12.1.1 The trust beneficiaries of the trust are blood relatives.

8.12.1.2 The payment of the applicable conversion fee which is based on the number of beneficiaries and determined in accordance with the table outlined in 8.12.5.

8.12.2 The total levy will be determined by the number of beneficiaries of the trust, 21 years of age or older, in accordance with the table 8.12.5 provided that a minimum of the levy for one beneficiary is payable.

8.12.3 The levy will be levied on the trust and the trust is responsible for the collection of the levies from the beneficiaries.

8.12.4 The trustees of the trust will be requested annually to provide the directors of the company, in a format acceptable to the directors, with a letter signed by the accounting officer/auditor of the trust confirming the trustee/s and beneficiary details at February of each year. Should the trust fail to make the necessary disclosure, the trust will be charged the levies applicable to a trust with 10 beneficiaries.

8.12.5 Levy Structure - family trusts

No of beneficiaries (over 21 years of age)	Conversion fee %	Levy % of non-resident levy	Levy per beneficiary
1	0.5%	100%	100.0%
2	1.0%	110%	55.0%
3	1.5%	120%	40.0%
4	2.0%	130%	32.50%
5	5.0%	166.7%	33.3%
6	6.0%	183.3%	30.6%
7	7.0%	200.0%	28.60%
8	8.0%	216.7%	27.10%
9	9.0%	233.3%	25.90%
10	10.0%	250.0%	25.0%

### 8.13 Syndicates (Multiple owners or companies or close corporations)

8.13.1 The directors will permit the sale or transfer of shares to new syndicates formed after 11 August 2012, subject to the terms and conditions as outlined in this Memorandum of Incorporation as well the following additional restrictions and requirements;

8.13.1.1 The syndicate participation will be limited to 4 natural persons.

8.13.1.2 The payment of the applicable conversion fee, which is based on the number of participants and determined in accordance with the table outlined in 8.13.6.

8.13.1.3 Should the syndicate originally be formed with less than 4 (four) participants, only a “top up” is payable on any further increase in participants to the maximum of 4 (four) participants on the original conversion fee paid.

8.13.1.4 Should there be a permanent reduction in the number of participants from the original syndicate formed, no further conversion fee is payable. The syndicate will however continue to pay the levy on the originally formed number of participants should the reduction be temporary and they intend to increase the number of participants back to the original formation.

8.13.2 The total levy will be determined by the number of participants in accordance with the table 8.13.6.

8.13.3 One of the participants of the syndicates is to provide the directors of the company, in a format acceptable to the directors, with a letter signed by the accounting officer/auditor of the syndicate confirming the details of the participants by February of each year. Should the

syndicate fail to make the necessary disclosure, the syndicate will be charged the levies applicable to a syndicate with 4 participants.

8.13.4 In the case of a company or close corporation, the levy will be levied on the company and the company is responsible for the collection of the levies from the participants.

8.13.5 In the case of joint ownership, the notices and levy invoice will be sent to the first-named in the share register.

8.13.6 Levy Structure – Syndicates

Participants	Conversion fee %	Levy % of non-resident levy	Levy per participant
1	5.0%	100%	100%
2	10.0%	200%	100%
3	15.0%	300%	100%
4	20.0%	400%	100%

## 9. MEMBERSHIP LEVIES

9.1 It is recorded that substantially the whole of the Company's funding shall be derived from Member levies contribution in accordance with the provisions of Section 13 of the Share Blocks Act and the Use Agreement, the levies being currently exempt from taxation in terms of Section 10(1)(e) of the Income Tax Act.

9.2 The levies for the next financial year will be determined by the directors and notified to the shareholders.

9.3 The levies will be determined according to the following table, should the tables for inheritance (8.11.3), family trusts (8.12.5) and syndicates (8.13.6) not apply;

	Levy as percentage of non-resident levy
Non resident	
• Individual	100%
• Trust (existing prior to 11 August 2012)	100%
• Company (existing prior to 11 August 2012)	100%
Syndicate – Non-resident (existing prior to 11 August 2012)	
• 1 Participant	100%
• 2 Participants	133%
• 3 Participants	167%
• 4 Participants	200%
Resident	133%

9.4 The levies for the next financial year will be based on the ownership structure as at February of each year and levied according to the table as outlined in 9.3, 8.11.3, 8.12.5, 8.13.6 as may be applicable. For the purposes of determining the levy applicable for the next financial year the assumption is that the ownership structure or beneficiaries disclosed in terms of 9.6, 9.7, 8.12.4 or 8.13.3 will remain unchanged for the year for which the levy is being determined, regardless of actual changes in the syndicate or trust.

9.5 Syndicates prior to the 11 August 2012 are subject to the levy structure outlined in 9.3 and will continue to pay levies applicable to non-resident company. This exemption will cease to be applicable if there is a change in

the composition of the syndicate as outlined in 9.5.2. The syndicate will then become liable for levies determined in accordance with the table outlined in 8.13.6.

9.5.1 Syndicates will be requested to disclose the composition/membership of their syndication by February each year to the directors for the purpose of the determining the appropriate levy. The disclosure shall be made in a form acceptable to the directors. Should the syndicate fail to make the necessary disclosure, the syndicate will be charged the levies applicable to a syndicate with 4 participants.

9.5.2 Should syndicates formed prior to 11 August 2012 wish to increase the number of participants, no conversion fee is payable, but the levy structure will change to that outlined in 8.13.6. The maximum number of participants remains as 4 (four).

9.6 Where the shares have been held by a trust prior to 11 August 2012, the trust will be subject to the levy structure outlined in 9.3 and will continue to pay levies applicable to a non-resident trust. This exemption will cease to be applicable if additional beneficiaries, 21 years of age or older are added. The trust will then become liable for levies determined accordance with the table outlined in 8.12.5.

9.6.1 Trustees of the trust are required to disclose the beneficiaries of the trust by the February each year to the directors for the purpose of the determining the appropriate levy. The disclosure shall be made in a form acceptable to the directors. Should the trustees fail to make the necessary disclosure, the trust will be charged the levies applicable to a trust with 10 beneficiaries.

## **10. GENERAL MEETINGS**

10.1 The Company shall in each year hold an annual general meeting; provided that:

- 10.1.1 not more than 15 (fifteen) months shall elapse between the date of one annual general meeting and that of the next; and
- 10.2 The Directors shall have the power to convene other general meetings of the Company at such time and place as the Directors determine.
- 10.3 The Directors shall also convene other general meetings where a requisition is made by the number of Members of the Company as required by the Act, failing which such a meeting may be convened by the requisitionists themselves in accordance with the Act.
- 10.4 General meetings convened in accordance with Sections 61 and 64 of the Act shall be held at such time and at such place as is determined in terms of those sections.

## **11. NOTICE OF GENERAL MEETINGS**

- 11.1 Subject to the provisions of the Act:
  - 11.1.1 not less than 10 business days' notice in writing shall be given to all members;
- 11.2 The notice period as provided for in article 11.1 shall be exclusive of the day on which the notice is served or deemed to be served and inclusive of the date of the meeting.
- 11.3 The notice of a general meeting shall state
  - 11.3.1 the place, day and hour of that meeting; and
  - 11.3.2 the matters which will be considered at such meeting.
- 11.4 A meeting of the Company shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if every person who is entitled to exercise voting rights in respect of any item on the meeting agenda is present at the meeting and every such person votes to waive the required minimum notice of the meeting.

- 11.5 The inadvertent omission to give notice of a meeting to, or the non-receipt of a notice of a meeting by any person entitled to receive such notice, shall not invalidate the proceedings at that meeting.
- 11.6 As may be appropriate at the discretion of the Directors, and available, the Company may provide for participation by shareholders by electronic communication.
- 11.7 No resolution for the dismissal of a director or the removal of the auditor or other resolution for which special notice is required in terms of any provision of the Act, shall have effect unless notice of the intention to move it had been given to the company not less than 28 (twenty eight) days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of such meeting not less than 15 (Fifteen) days before the meeting: provided that if a meeting of the company is called for a date 15 (Fifteen) days or less after notice of the intention has been given to the company, the notice, though not given within the time required by this article, shall be deemed to have been properly given for the purposes hereof.

## **12. PROCEEDINGS AT GENERAL MEETINGS**

- 12.1 The annual general meeting shall deal with and dispose of all matters prescribed by the Act, including the consideration of the annual audited financial statements, the election of Directors and the appointment of an auditor and may deal with any other business laid before it.
- 12.2 Subject to the provisions of the Act, no business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Save as herein otherwise provided, a quorum at any general meeting shall be sufficient members who are present in person or by proxy to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and provided further that no less than 3 (three)



Members entitled to vote are present in person or by proxy at the commencement and throughout the meeting.

- 12.3 If within half-an-hour after the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to a date 7 (seven) business days later and if at such adjourned meeting a quorum is not present within half-an-hour after the time appointed for the meeting, the Members present in person and by proxy shall be a quorum.
- 12.4 The Chairman shall preside as Chairman at every general meeting of the Company.
- 12.5 If at a general meeting there is no Chairman or the Chairman is not willing to act or is not present within 15 (fifteen) minutes after the time appointed for holding the meeting, 1 (one) of the Directors present shall be Chairman of the meeting.
- 12.6 Subject to the provisions of the Act, the Chairman of the meeting may, with the consent of the majority of Members present at any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

### **13. VOTES OF MEMBERS AT GENERAL MEETINGS**

- 13.1 Every Member who is represented either in person or by proxy at a general meeting shall have 1 (one) vote per share held by such Member.
- 13.2 At a general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, in which case the Members or their proxy shall have one vote for all shares held, and in the event of a poll the Member or his proxy shall have one vote for every share held. A poll may be called or

demanded (before or after the declaration of the result of the show of hands)  
by:

13.2.1 the Chairman of the meeting; or

13.2.2 by at least 5 (five) Members present in person or by proxy having the  
right to vote at meetings.

13.3 Any demand for a poll may be withdrawn.

13.4 The poll shall be taken in such a manner as the Chairman of the meeting  
directs and the results of the poll shall be deemed to be the result of the  
meeting.

13.5 Where a poll is not demanded a declaration by the Chairman of the meeting  
that a resolution has been passed as well as the making of an entry to that  
effect in the book containing the minutes of the proceedings of general  
meetings, shall be conclusive evidence of the fact, without proof of the  
number or proportion of the votes recorded in favour of or against such  
resolution, that the resolution was so passed.

13.6 In the case of an equality of votes, the Chairman of the meeting shall not  
have a second casting vote unless the Members otherwise determine in the  
general meeting.

13.7 For an ordinary resolution to be adopted at a Members meeting, it must be  
supported by more than 50% of the Members who voted on the resolution,  
as provided in Section 65 (7) of the Act.

13.8 For a special resolution to be adopted at a Members meeting, it must be  
supported by at least 75% of the Members who voted on the resolution, as  
provided in Section 65 (9) of the Act.

13.9 A special resolution adopted at a Members meeting is required in addition  
for;

13.9.1 Amendments to the Use Agreement or Rules.

- 13.9.2 Issue of shares.
- 13.9.3 Variation of rights attached to the shares when the share capital is divided into different classes.
- 13.9.4 Alienation of the Company's immovable property. However, for a special resolution for the alienation of the Company's immovable property to be adopted, it must be supported by at least 90% of the Members who voted on the resolution.
- 13.9.5 Alteration of the share capital.
- 13.9.6 As may be required in terms of the Act, the Share Blocks Act and this MOI.
- 13.10 In the case of joint holders, the vote of the person whose name appears first in the register of Members and tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.
- 13.11 If at any time, every Member of the Company is also a Director of the Company, as contemplated in Section 57 (4) of the Act, the authority of the Members to act without notice or compliance with any other internal formalities as set out in that section is not limited or restricted by this MOI.

#### **14. RESOLUTION PASSED BY SIGNATURE OF ALL MEMBERS**

- 14.1 Subject to the provisions of Section 65 (7) of the Act, an ordinary resolution in writing signed by the majority of Members of the Company entitled to attend and vote at a general meeting shall be as valid and effective as if it had been passed at a general meeting properly held on the date on which the last signature is affixed.
- 14.2 Such resolution may consist of several documents in the same form, each of which is signed in terms of this article, by sufficient Members to constitute a quorum and shall be deemed (unless a statement to the contrary is made on

that resolution) to have been passed on the closing date stated in the notice which shall be no less than 15 business days after the posting date and providing notice is given to all Members.

## **15. RECORDS OF GENERAL MEETINGS**

- 15.1 The Directors shall cause a record to be made of the proceedings at every general meeting, including all resolutions passed at such meetings and shall cause such record and all resolutions passed to be inserted in a book provided for that purpose, or in electronic format.
- 15.2 Any copy of any record or resolution referred to in article 15.1, which purports to be signed by any Director or the Chairman, shall be prima facie evidence of the matters stated herein.

## **16. PROXIES**

- 16.1 A Member may appoint a proxy to attend a general meeting on the Members behalf.
- 16.2 The instrument appointing a proxy shall be in writing and signed by the appointer or by his agent duly authorised in writing or, if the appointer is a person other than a natural person, accompanied by a resolution of its Directors or other governing body authorising the person named in the proxy to act as its representative at any meeting of the Company.
- 16.3 The holder of a general or special power of attorney, whether he is himself a Member or not, given by a Member, shall be entitled to attend meetings and to vote, if duly authorised under the power to attend and take part in the meeting.
- 16.4 The instrument appointing a proxy to vote at a meeting of the Company shall be deemed also to confer authority to demand or join in demanding a poll, and for the purpose of Section 63 (7) of the Act, a demand by a proxy shall be the same as a demand by a Member.

- 16.5 The instrument appointing a proxy and the power of attorney or the other authority, if any, under which it is signed, shall be deposited at the office not less than 48 (forty-eight) hours before the time for holding the meeting at which the person named in the instrument proposes to vote and in default of complying herewith, the instrument of proxy shall not be treated as valid.
- 16.6 No instrument appointing a proxy shall be valid after the expiration of 6 months from the date when it was signed, unless so specifically stated in the proxy itself and no proxy shall be used at an adjourned meeting which could not have been used at the original meeting.
- 16.7 The instrument shall be in the following format as outlined in Annexure 3.

**Note 1:** A Member entitled to attend and vote is entitled to appoint a proxy to attend, speak and vote in his stead, and such proxy need not also be a Member of the Company

**Note 2:** This Proxy shall be binding upon the Member until such time as the Member personally withdraws it and it is limited to the voting on the Special and Ordinary Resolutions referred to herein. Unless otherwise instructed, the proxy will vote as he thinks fit. A Member entitled to attend and vote at the meeting is entitled to appoint a proxy to attend, speak and vote in his stead. The proxy nominated need not be a Member of the Company.

Any alteration or correction made to this form of proxy (excluding the deletion of alternatives) must be initialled by the signatory. Documentary evidence establishing the authority of a person signing this form of proxy in a representative capacity (i.e. on behalf of a Company, Close Corporation or Trust) must be attached to this form. The completion and lodging of this form of proxy will not preclude the relevant Shareholder from attending the meeting and speaking and voting in person thereat, to the exclusion of any proxy appointed in terms thereof, should such Member wish to do so. Emailed and facsimile copies of this proxy form must be duly verified before the commencement of the meeting to be eligible for acceptance. If any one

of the requirements contained herein is not fulfilled, the proxy form and/or the nomination of the proxy will be null and void.

## **17. NUMBER OF DIRECTORS**

17.1 The number of directors shall be a minimum of three (3) or no more than seven (7). Notwithstanding the foregoing, members of the company shall if they:-

17.1.1 do not exceed 10 (ten) in number have the right to appoint at least one of the directors of the company; and

17.1.2 exceed 10 (ten) in number, have the right to appoint at least two of the directors of the company.

17.2 The company shall not fail to take steps to ensure the appointment of the directors referred to in 17.1.

17.3 The directors shall have the power to appoint a person as an additional director at any time and from time to time, and the appointment shall remain in force unless it is resolved at the next succeeding general meeting to set the appointment aside.

## **18. ELECTION OF DIRECTORS**

18.1 The directors shall retire from office in the following manner;

18.1.1 At each annual general meeting of the company in every subsequent year, two (2) directors shall retire from office, provided that there are at least 4 directors currently in office that do not qualify for retirement and re-election.

18.1.2 A retiring director shall be eligible for re-election, and, if re-elected, shall be deemed not to have vacated his office.

18.1.3 Re-election will be by simple majority.

- 18.2 The directors to retire every year shall be those who have been longest in office since their last election, but as between persons who become Directors in the same day, those to retire shall, unless they otherwise agree among themselves, be determined by lot. A retiring Director shall be eligible for re-election.
- 18.3 In the event of there being an uneven number of Directors on the Board, the Directors shall determine which Directors in longest office since their last election shall retire.
- 18.4 The remuneration of directors shall from time to time be determined by the company at a general meeting.
- 18.5 If any director be called upon to preform extra services for any purpose of the company, the company may remunerate that director in such manner as the directors may decide, and such remuneration may be either in addition to, or in substitution for his remuneration as determined under the last preceding article. The directors shall be compensated for all travelling and other expenses which they have incurred properly and on necessary grounds in respect of the company's business.
- 18.6 In the event of any person howsoever being entitled to appoint the majority of the Directors of the Company, that person or his representative shall guarantee compliance with any obligation of the Company specified in this MOI.
- 18.7 Subject to the provisions of Section 66 (2)(b), the Company may from time to time in a general meeting increase or reduce the number of Directors.
- 18.8 Provided that the Board of Directors shall comprise not less than three (3) directors, any casual vacancy occurring on the Board of Directors may be filled by the Directors, but the Director so appointed shall be subject to retirement at the same time as if he had become a Director on the day on which the Director in whose stead he is appointed was last elected as Director.

- 18.9 The appointment of 2 (two) or more persons as Directors of the Company by a single resolution shall not be moved unless a resolution that it shall be so moved has first been agreed to by the meeting without any vote against it.
- 18.10 The Directors may elect a Chairman of their meeting and determine the period for which he is to hold office, but if no such Chairman is elected, or if at any meeting the Chairman is not present within fifteen (15) minutes after the time appointed for holding the same, the Directors may elect one of the other Directors to be Chairman of the meeting.
- 18.11 Each Director shall have the power to nominate with the approval of the Board, any person whether he is a Member or not, to act as alternate Director in his place during his absence or inability to act as such Director, and on such appointment being made, the alternate Director shall, in all respects, be subject to the terms, qualifications and conditions existing with reference to the other Directors of the Company. A Director whilst also acting as a alternate Director, shall at any meeting of the Directors be entitled to two (2) votes.
- 18.12 The alternate Directors, whilst acting in the stead of the Directors who appointed them, shall exercise and discharge all the powers, duties and functions of the Directors they represent. The appointment of an alternate Director shall be revoked, and the alternate Director shall cease to hold office, whenever the Director who appointed him ceases to be a Director or gives notice to the secretary of the Company that the alternate Director representing him has ceased to do so.

## **19. DISQUALIFICATION AND REMOVAL OF DIRECTORS AND ALTERNATE DIRECTORS**

- 19.1 In addition to the provisions of Section 69 of the Act, any Director or Alternate Director shall cease to be a Director of the Company on the happening of any of the following events:
- 19.1.1 his estate is finally sequestrated;



- 19.1.2 he files a petition for the surrender of his estate as insolvent;
  - 19.1.3 he is placed under curatorship by any court of competent jurisdiction;
  - 19.1.4 he delivers a notice of his resignation at the office with effect from:
    - 19.1.4.1 the date on which that notice is delivered; or
    - 19.1.4.2 any later date stated in that notice to which the Directors agree;
  - 19.1.5 if he fails to attend meetings of Directors, without prior apology and/or without good cause for 6 (six) consecutive months without appointing an alternate director to represent him; or
  - 19.1.6 if he is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare his interest and the nature thereof in the manner required by the Act;
  - 19.1.7 passes, publishes or causes to be published any information to the press or media, directly or indirectly, which information is confidential or which information will bring the reputation of the Company in disrepute and/or intends to be detrimental to the Company in any way;
  - 19.1.8 if the Director is removed by an ordinary resolution in a general meeting of Members in accordance with Section 71 of the Act.
- 19.2 A Director or alternate Director is not required to hold any shares to qualify as such.

## **20. POWERS AND DUTIES OF DIRECTORS**

- 20.1 The business of the Company shall be managed by the Directors who may pay all expenses of the Company, and may exercise all such powers of the

Company as are required by the Share Blocks Act, or by this MOI, to be exercised by the Company in a general meeting.

20.2 Subject to the restrictions contained in the Share Blocks Control Act and to the provisions of any agreement existing from time to time between the company and any shareholder or shareholders:-

20.2.1 the Directors may subject to the provisions of the Statutes, from time to time, in their discretion, raise or borrow from the Members or other persons any sum or sums of money for the purposes of the Company, provided that the amounts in the aggregate so raised or borrowed from time to time shall not exceed such amount as may be determined by the Company in a general meeting from time to time.

20.2.2 the Directors may raise or secure the repayment of such monies in such manner and upon such terms and conditions in all respects as they think fit, and in particular by issue of debentures, redeemable or non-redeemable and secured or unsecured, or mortgage, charge or other security on the undertaking or the whole or any part of the property of the Company, both present and future.

20.3 The directors may from time to time appoint one or more of their body to the office of managing director or manager or in an executive office for such period and at such remuneration (whether by way of salary or commission or participation in profits or partly in one way, and partly in another) as they may think fit; but his appointment shall terminate **ipso facto** if he ceases for any reason to be a director.

20.4 The Directors may from time to time entrust or confer upon a managing director or manager such of the powers and authorities vested in them, as they may think fit, and may confer such powers and authorities for such time and to be exercised for such objections and purposes and upon such terms and conditions and with such restrictions as they may think expedient. The directors may confer such powers and authorities either collaterally or to the

exclusion of, and in substitution for, all or any of the powers and authorities of the Directors and may from time to time revoke or vary all or any of such powers and authorities.

20.5 The directors shall in terms of the Act cause minutes to be kept for:-

20.5.1 all appointment of officers;

20.5.2 the names of directors present at each meeting of the directors; and

20.5.3 all proceedings at all meetings of the Company and of the Directors; and every Director present at a meeting of directors shall sign his name in a register kept for that purpose. Such minutes must be signed by the Chairman of the meeting at which the proceeding took place or by the Chairman of the next meeting. The minutes of the meetings of the Company must be made available to members in terms of Section 26 of the Act for the purposes of inspection and making copies.

## **21. PROCEEDINGS OF DIRECTORS**

21.1 The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by the majority of votes. In the event of an equality of votes, the Chairman shall not have a second or casting vote. A Director may and the secretary on the requisition of a Director shall, at any time convene a meeting of the Directors.

21.2 Any Director is at all times entitled to convene a meeting of the Directors by giving ten (10) business days notice to all Directors, or such shorter notice as may be agreed to by all the Directors.

21.3 The following provisions apply in respect of the proceedings of Directors:-

21.3.1 the quorum necessary for the transaction of the business of the Directors may, unless there is only one Director, be fixed by the Directors and unless so fixed shall, when the numbers of the

Directors exceeds 3 (three), be 3 (three) and the number of Directors does not exceed 3 (three), be two (2), provided always that if any Director has or any Directors have been appointed in terms of the provisions of article 17.1, the number of Directors required for a quorum at any meeting of Directors of the Company shall include that Director or at least one of those Directors as the case may be, but if such Director or Directors, if any, is or are not present within half an hour after the time appointed for such meeting, the meeting shall stand adjourned to a day not earlier than 5 (five) days and not later than 14 (fourteen) days after the day of the meeting, as may be decided, and if at such adjourned meeting such Director or Directors is or are not present within half an hour after the time appointed for the meeting, the directors present shall be a quorum.

- 21.4 The continuing Directors may act notwithstanding any vacancy in their body.
- 21.5 Though the continuing Directors may act notwithstanding any vacancy in their body if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the Company as the necessary quorum of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number, or of convening a general meeting of the company but for no other purpose.
- 21.6 The Directors may participate in a meeting of the Directors by means of conference telephone or similar equipment by means of which all persons participating in the meeting can hear each other at the same time and any such participation in a meeting shall constitute presence in person at the meeting.
- 21.7 Subject to the provisions of the Act, a resolution in writing signed by a majority of Directors, shall be as valid and effective as if it had been passed at a meeting of the Directors duly called and constituted. Any such resolution may consist of several documents in a like form, each signed by one or more of the signatories to the resolution. A resolution of Directors passed in terms

of this article shall be placed in the minute book of the Company and shall be noted at the next succeeding meeting of Directors and shall be signed by the Chairman of that meeting, whereupon the provisions of Section 73(8) of the Act shall be deemed to apply to the resolution.

- 21.8 The Directors may delegate any of their powers to a committee consisting of such members or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any rules that may be imposed on them by the Directors.
- 21.9 A committee may elect a Chairman of their meetings; if no such Chairman is elected, or if at any meeting the Chairman is not present within 5 (Five) minutes after the time appointed for holding the same, the members present may choose one of their number to be chairman of the meeting.
- 21.10 A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of the votes of the members present, and in case of an equality of votes, the Chairman shall not have a second or casting vote.
- 21.11 All acts by any meeting of the Directors or a committee of Directors or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such Directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.
- 21.12 In conjunction with his directorship of the Company, a Director may occupy any office or position in the Company carrying remuneration or other advantage. The Directors may decide on the conditions in regards to remuneration, term of office and the powers pertaining to such office or position.

## **22. FINANCIAL YEAR**

The financial year of the Company shall commence on 1 March and end on the 28 February of each year.

## **23. NOTICES**

23.1 A notice may be given by the Company to any Member either personally, or by sending it by prepaid post addressed to such Member at his registered address or (if he has no registered address in the Republic) at the address (if any) within the Republic supplied by him to the Company for the giving of notices to him, or by facsimile or electronic communication.

23.2 Notice of every general meeting shall be given to the Auditor, for the time being, of the company.

23.3 Any notice by prepaid post shall be deemed to have been served at the time when the letter containing the notice was posted and in proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

23.4 Whenever a notice is to be given personally or sent by post, the notice may be given by the company to the joint holders of a share by giving notice to the joint holder named first in the register in respect of the share.

23.5 Notice given to any member shall be binding on all persons claiming on death or by a transmission of his interests.

23.6 The signature to any notice given by the company may be written or printed or partly written or partly printed.

## **24. WINDING-UP**

24.1 Upon dissolution of the Company, the assets which remain after payment of the debts and liabilities of the Company and the costs of liquidation, shall be applied as follows:

- 24.1.1 To repay to the Members the amount paid up on the Shares respectively held by the Members.
- 24.1.2 To repay to the Members all amounts paid in respect of the Company's loan obligation, providing that such refund shall be reduced by the amount that any such Member is in arrear with any debt due to the Company as at the date of winding up of the Company.
- 24.1.3 The balance remaining after the payments referred to in sub-articles 24.1.1 and 24.1.2 shall be paid to the Members in proportion to the number of Shares held by each Member to the total issued share capital.

## **25. INDEMNITY**

Subject to the provisions of Section 77 of the Act, the members of the Board and officers of the Company shall be indemnified by the Company against all proceedings, costs and expenses incurred by reason of any claim made against them in connection with their conduct of the affairs of the Company. No director shall be liable for any loss, damage, or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto.

## **26. LIMITATION OF LIABILITY OF DIRECTORS**

Each Director, alternate Director, manager, executive officer and other officer of the Company, and person employed by the Company as its auditor, shall be indemnified by the Company against any liability incurred by him from time to time in that capacity in defending any proceedings (whether civil or criminal) in which judgement is given in his favour or in which he is acquitted or in respect of any of those proceedings which are abandoned or in connection with any application made under Section 78 of the Act in which relief is granted to him by a court of competent jurisdiction.

## **27. ARBITRATION**

- 27.1 In the event of any dispute or difference arising between the Company and/or Directors and/or the Members (hereinafter referred to as “the parties”) as to the interpretation of the Use Agreement and/or any other agreement between the parties and/or the statutes and/or the rights and/or obligations of the parties arising from the MOI, such dispute or difference shall be referred to an arbitrator who shall settle the dispute in terms of and subject to the principles and conditions of the Arbitration Act No 42 of 1965 as amended.
- 27.2 The arbitrator shall be appointed by agreement between the parties, provided that in the event of the parties failing to agree on the appointment of an arbitrator within 14 (fourteen) days after receipt of the notice to do so, the party requesting arbitration proceedings may request the Chairperson, for the time being, of the Society of Advocates of the High Court of South Africa of the High Court Division in which the Buildings are situate, to appoint an arbitrator.
- 27.3 The decision of the arbitrator shall be final and binding and may be made an order by any court to whose jurisdiction the parties to the dispute are subject.



## **ANNEXURE 1**

### **The provisions of the Share Blocks**

**Control Act No. 59 of 1980 control the business of the  
Company in the following sections:**

**1. Section 3 – Application of certain laws in respect of share block companies**

**2. Section 5 – Restrictions on the operation of a share block scheme**

**3. Section 7 – Main Objects**

- to operate a share block scheme in respect of immovable property owned or leased by it.
- a Member shall be entitled to use a specified part of the immovable property in accordance with the Use Agreement entered into between the Member and the Company.

**4. Section 8 and 8A – Sectional Title Register**

The Company shall have the power to perform any act and incur any expenditure to effect the opening in terms of **Section 12** of the Sectional Titles Act 1986, as amended, from time to time of a sectional titles register in relation to its immovable property.

**5. Section 10 – Rights attaching to shares in a Share Block Company**

The shares shall confer the same vote as every other share of the Company, and the shares shall confer a right to, or interest in, the use of the immovable property.

**6. Section 11 – Offer of sale of shares**

Share Block Company shares may be offered to the public for sale if, in lieu of compliance with any other requirements, such offer is accompanied by a statement

that any proposed purchaser of any such shares is required to enter into a contract referred to in Section 17 in respect of such shares and that a copy of the contract required to be entered into is available for inspection free of charge at an address indicated in the statement.

**7. Section 12 – Directors**

Refer to Article 17.1 and 17.2 of this MOI.

**8. Section 13 - Levy Fund and Trust Accounts**

8.1 The Company shall establish and maintain a levy fund sufficient in the opinion of its directors for the repair, upkeep, control, management and administration of the Company and of the immovable property in respect of which it operates the share block scheme, for the payment of rates and taxes and other local authority charges on the said immovable property, any charges for the supply of electric current, gas, water, fuel, sanitary and any other services to the said immovable property, and services required by the Company, for the covering of any losses suffered by the Company for the payment of any premiums of insurance and of all expenses incurred or to be incurred to effect the opening under Section 12 of the Sectional Titles Act of a sectional title register in relation to the said immovable property, and for the discharge of any other obligation of the Company.

8.2 The Members shall contribute to the levy fund as laid out in Sections 8 and 9 of the MOI.

8.3 The Company shall open and maintain with a bank or similar registered financial institution/s a separate account which shall be styled the Levy Fund Account and into which shall be deposited all Members' contributions to the levy fund, or alternatively, shall entrust such contributions to a practitioner (as defined in the Share Blocks Act) or an estate agent.

**9. Section 14 – Loan Obligation**

9.1 Each Member of the Company shall be liable for that portion of the Company's loan obligation as agreed upon between the Company and the

Members and in the absence of such agreement then in the proportion of each member's shares to the total number of issued shares of the Company.

9.2 All monies paid by Members to the Company in respect of the Company's loan obligation shall either:

9.2.1 be deposited by the Company into a separate account, styled the Share Blocks Control Act Section 15(3) Trust Account, which shall be opened and maintained by the Company with a registered financial institution; or

9.2.2 be entrusted to a practitioner (as defined in the Share Blocks Control Act) or an estate agent.

9.3 If any monies referred to in Article 9.2 are not immediately required to be applied in reduction of the Company's loan obligation they may be invested in a separate savings or other interest bearing account with any registered financial institution or other institution designated by the Minister of Finance, which account shall be styled the Share Block Control Act Section 15(3) Trust Account.

9.4 The monies paid to the Company in terms of Article 9.2 shall be applied for the sole purpose of the redemption of the Company's loan obligation unless otherwise decided upon by the Members by resolution passed as contemplated in Articles 9.5 and 9.6.

9.5 **Borrowing Powers**

9.5.1 The Company shall not increase its loan obligations or encumber any of its assets unless the increase or encumbrance has been approved by a resolution of at least seventy-five percent (75%) in number of the Members, having the right to vote at the relevant meeting and holding in the aggregate at least seventy-five percent (75%) of the total number of votes of all the Members.

9.5.2 The provisions of the Act relating to notice and registration of a special resolution shall mutatis mutandis apply in respect of the resolution referred to in Article 9.5.1 above.

9.5.3 The provisions of Article 9.5.1 shall not apply:

9.5.3.1 in respect of an encumbrance which secures an existing liability comprised in the Company's loan obligation;

9.5.3.2 where at the time the shares of the Company were offered for subscription or sale, it was disclosed to all Members of the Company and to the person to whom the shares were offered that the Company contemplated increasing its loan obligations or encumbering its assets on stated terms and conditions and the Company has acted in accordance with such disclosure.

9.6 Subject to Article 9.5 and to the provisions of any agreement existing from time to time between the Company and any shareholder or shareholders:

9.6.1 the directors may in their discretion from time to time raise or borrow any sum or sums of money for the purposes of the Company without limitation;

9.6.2 the directors may raise or secure the repayment of such sum or sums in such manner and upon such terms and conditions in all respects as they think fit and in particular by the issue of bond, perpetual or redeemable, secured or unsecured debentures, or any mortgage, charge or other security on the undertaking of the whole or in part of the property of the Company, both present and future.

## 10. Accounting Records

10.1 The directors shall cause such accounting records as are prescribed by the provisions of the Share Blocks Control Act to be kept, including such accounting records as are referred to in Articles 10.1.1 and 10.1.2 hereunder

and also such other accounting records as are necessary fairly to present the state of affairs and business of the Company and to explain the transactions and financial position of the trade or business of the Company.

10.1.1 The directors shall ensure that such accounting records as are necessary fairly to reflect and explain the state of affairs in respect of the moneys received and expended by or on behalf of the Company in respect of the levy fund, referred to in Article 8 are kept.

10.1.2 The directors shall keep separate books, accounting records and financial statements such as are necessary to fairly reflect and explain the state of affairs in respect of all moneys paid to the Company by Members in reduction of the Company's loan obligation and the directors shall ensure that the Company's books and accounting records relating to these moneys are balanced at least every six months and that these books, accounting records and financial statements are audited by the Company's auditors at least once annually.

10.2 The accounting records shall be kept at the registered office of the Company or at such other place or places as the directors think fit, and shall always be open to inspection by the directors and to other parties in accordance with the provisions of the Act and the Promotion of Access to Information Act No. 2 of 2000.

## **11. Annual Financial Statements**

11.1 The directors shall from time to time in accordance with the provisions of the Act cause to be prepared and laid before the Company in general meeting such annual financial statements, group financial statements and group reports, if any, together with such financial statements prepared in terms of Article 10.

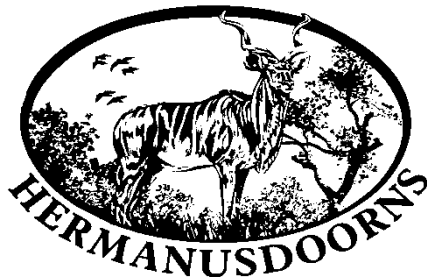
11.2 A copy of the financial statements, group annual financial statements and group reports which are laid before the Company in an annual general meeting shall be in accordance with the provisions of the Act.

12. **Audit**

An auditor shall be appointed as required in terms of the provisions of the Share Blocks Act.

13. **Use Agreement (Annexure 2)**

ANNEXURE 3



**HERMANUSDOORNS SHAREBLOCK LTD**

Reg 91/06901/06

c/o 33 Western Boulevard, City West, Johannesburg  
 P O Box 107, Rivonia, 2128  
 Tel: (011 630-3002 Fax: (011) 630-3235

**Form of Proxy**

Being the registered owner of \_\_\_\_\_ ordinary shares in the capital of "Hermanusdoorns Shareblock Limited" (the Company),

I/We \_\_\_\_\_ (names in full) hereby appoint:

1. \_\_\_\_\_ alternatively,
2. \_\_\_\_\_ alternatively,

the Chairman of the meeting as my / our proxy to vote for me / us on my / our behalf at the Annual General Meeting of the Company to be held on 06 August 2011 at 11H00 and at every adjournment thereof.

*\* Please indicate with an X in the appropriate block below how you wish your votes to be recorded, with regard to the resolutions defined below, otherwise the proxy may vote as he / she deems fit.*

Number	Resolution number	*For	*Against	*Abstain
01				
02				
03				
04				

Re-Election of Directors

Director for Re-election	*For	*Against	*Abstain

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2011

Signature /s \_\_\_\_\_